



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Angelique Gaeta
Larry Esquivel

**SUBJECT: OUTDOOR VENDING ON PUBLIC
AND PRIVATE PROPERTY**

DATE: April 29, 2013

Approved

Date

5/2/13

RECOMMENDATION

- (a) Conduct a Public Hearing and consider an ordinance amending the San José Municipal Code to amend Sections 6.54.110, 6.54.260, and 6.54.265 of Chapter 6.54 of Title 6 of the San José Municipal Code to modify the conditions for Approved Location Peddlers and authorize the City Manager to promulgate regulations on behalf of all Approved Location Peddlers' and adding Section 6.54.320 to extend the term of Approved Location Peddler Permits and Mobile Peddler Permits; and
- (b) Conduct a Public Hearing and consider an ordinance amending Title 20 of the San José Municipal Code (the Zoning Ordinance) to amend: Section 20.30.100 of Chapter 20.30 (Residential Zoning Districts) to allow Outdoor Vending of Fresh Fruits and Vegetables on School, Library, Community Center, and Religious Assembly sites; Sections 20.40.100 and 20.40.520 of Chapter 20.40 (Commercial Zoning Districts) to allow Outdoor Vending of Fresh Fruits and Vegetables in Commercial Zoning Districts; Section 20.50.100 of Chapter 20.50 (Industrial Zoning Districts) to allow Outdoor Vending of Fresh Fruits and Vegetables in Industrial Zoning Districts; Section 20.70.100 of Chapter 20.70 (Downtown Zoning Districts) to allow Outdoor Vending of Fresh Fruits and Vegetables, and to allow Banquet Facilities as Ground-floor Space Uses, in Downtown Zoning Districts; Sections 20.75.200 and 20.75.320 of Chapter 20.75 (Pedestrian Oriented Zoning Districts) to allow Certified Farmers' Markets, Neighborhood Agriculture and Outdoor Vending of Fresh Fruits and Vegetables in Pedestrian Oriented Zoning Districts; and Sections 20.80.810 and 20.80.820 of Chapter 20.80 (Specific Use Regulations, Outdoor Vending Facilities) to allow Outdoor Vending of Fresh Fruits and Vegetables and other products in conformance with specific criteria without an Administrative Permit all to further implement the Design for a Healthful Community Major Strategy, the Vibrant Neighborhoods Goals and Policies, the Economic Development Goals and Policies, and the Land Use Goals and Policies set forth within the Envision San José 2040 General Plan and to make other technical, formatting or other nonsubstantive changes within Title 20.

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OUTCOME

The proposed ordinance changes respond to Council direction and provide greater flexibility for City Staff to address a number of concerns relating to persons engaged in outdoor vending in both the public right-of-way and on privately-owned property.

EXECUTIVE SUMMARY

To promote access to healthy foods; streamline the permitting processes for vendors selling all wares, including fresh fruits and vegetables; increase enforcement of the regulations related to outdoor vending; and, protect the public health, safety and welfare, the proposed ordinances include provisions which do the following:

1. Expand areas where vendors can sell their wares;
2. Expand the space within which vendors can operate;
3. Require reasonable buffers between vendors and residential uses of property;
4. Require reasonable distances between vendors;
5. Extend the terms of required permits, easing the administrative burden on vendors to increase compliance with City regulations;
6. Extend the terms of required permits, easing the administrative burden on staff and allowing staff more time to enforce City regulations;
7. Allow for compliance with County Health Regulations; and
8. Provide flexibility to the City Manager to modify regulations which address vending in the public right-of-way to respond to changing needs of the community.

BACKGROUND

For purposes of outdoor vending in the City of San José, those persons who sell their wares in the public right of way are referred to in the San José Municipal Code (Code) as “peddlers” and are subject to permitting requirements and regulation under Chapter 6.54 of Title 6 of the Code. Those persons vending from private property are referred to as “vendors” and are subject to permitting requirements and regulation under Title 20 of the Code. For ease of reference and for purposes of this memorandum only, both categories of individuals will hereafter be referred to as “vendors.”

On February 2, 2012, Council members Campos, Kalra, Liccardo and Rocha authored a memorandum to the Rules Committee requesting that staff be directed to place both the “Mobile and Outdoor” vending ordinances on the upcoming City Staff’s Budget Priority Setting Session. The Council members specifically requested that those ordinances: (a) explore implementing new regulations for “Green Cart” vendors, as submitted by the Health Trust; and (b) identify restricted and unrestricted areas for the sale of food from outdoor mobile food trucks. The memorandum also requested suspension of the “existing regulations of the Mobile Food Carts size requirements” for all licensed vendors until a new ordinance was put in place that would

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allow compliance with all City Ordinances and County Health Regulations. Lastly, the memorandum raised a concern with those vendors operating near brick-and-mortar establishments not being subject to the same requirements as those establishments and/or not following City and County regulations; thereby having an unfair advantage.

At the Rules Committee meeting on February 8, 2012, the Committee voted to refer the above request to the City Staff Budget Priority Setting Session and requested suspension of existing regulations of vendor carts size requirements until a new ordinance was in place that would allow for compliance with City and County requirements.

On February 13, 2012, during the City Staff Budget Priority Setting Session, the Council reviewed a number of ordinances to be prioritized for staff work and to be moved onto the list of top ten priority ordinances once the existing top ten were completed and removed from that list. The Council identified Access to Healthy Foods and Mobile Vending as items to be considered for adding to the list of top ten.

On February 23, 2012 the City Manager recommended that the scope of "Access to Healthy Foods" category be expanded to include streamlining the permit process for recurring farmers markets on private property and adding to that the streamlining of those components of Mobile Vending that deal with food products.

On February 28, 2012, Council identified Access to Healthy Foods, Streamlining Permitting Process for Recurring Farmers' Markets and Mobile Vending as priorities to be moved on to the top ten list between March 2012 and August 2012 as existing items were completed and removed from the list.

Since the above direction from Council, staff has had multiple meetings with representatives from the Health Trust, vendors and the community to get an understanding of their concerns and to receive feedback on the changes that staff is proposing here. In meetings with the Health Trust, the following were identified as top priorities: (1) encouraging the sale and consumption of healthy foods by making it easier for folks selling fresh fruits and vegetables to get approval from the City and by making these foods more accessible to the public; and (2) streamlining the permitting processes for vendors selling from both public and private property.

On March 21, 2013, staff engaged the public on vendor issues. Community members and industry representatives attended this meeting. The largest concern raised by participants was the lack of enforcement to ensure that vendors on public and private property comply with City regulations and County Health regulations. Many complained that vendors operated in a manner that blocked vehicular traffic, blocked pedestrian traffic, made excessive amounts of noise, and operated in an unsafe and unsanitary manner. Attendees also expressed a concern with overconcentration of vendors along public sidewalks. Ultimately, many community members wanted consistent enforcement of the City's existing and proposed regulations to ensure that there was a level playing field.

On April 10, 2013, the changes described herein and being proposed to Title 20 were considered by the Planning Commission in a public hearing. The Planning Commission's recommendations are transmitted in a separate memorandum to the City Council for consideration concurrently at the Council hearing scheduled for May 14, 2013. Although the memo includes topics beyond outdoor vending, only outdoor vending will be discussed here.

ANALYSIS

The proposed actions involve changes to both Title 6 (the Peddler Permit Ordinance) and Title 20 (the Zoning Ordinance) of the Code. Staff proposes that both Titles of the Code be amended to provide greater access for those who vend from public and private property and the private property owners who choose to allow these facilities on their property, as more fully set forth below.

VENDING IN THE PUBLIC RIGHT-OF-WAY

With regard to vending in the public right-of-way (*including the vending of healthy foods such as whole fruits and vegetables*), Chapter 6.54 of Title 6 of the Code distinguishes between two basic categories of vendors: "mobile" vendors and "approved location" vendors. Mobile vendors include mobile unit vendors (e.g. pushcarts) and motor vehicle-based vendors (e.g. food trucks) who move from location to location throughout the day selling their wares. Approved location vendors are those vendors that sell from a specific location in the sidewalk portion of the public right-of-way. An approved location must be permitted by the Police Department after conferring with the Department of Transportation. Approved location vendors do not roam the City. Instead they are approved to vend from a specific fixed location and remain at that location throughout the day. They are, however, required to remove their cart at the end of each day. Both types of vendors are subject to operational requirements that limit their location, hours of operation and manner in which they operate. The proposed ordinance would remove a number of those specific requirements from the San José Municipal Code. Additionally, for approved location vendors specifically, the proposed ordinance would delegate the authority to the City Manager to issue regulations in these areas, giving staff more flexibility to address the Council direction and respond to the needs of the stakeholders.

A. Size of Vendor Cart/Facility

- **Mobile Vendors**

Currently, there are no restrictions on the size of mobile unit vending carts operating in the public right of way. Mobile unit vendors are required to continue moving their carts from location to location every 15 minutes and to move a distance of at least 500 feet from their previous location. For a push cart, this requirement dictates the use of a small cart so that it can be moved throughout the City. For motor vehicle-based vendors, the vehicles are generally uniform in size. Consequently, no changes are needed or proposed for mobile vendors.

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- Approved Location Vendors

Currently, with the exception of those vendors operating in the "Downtown Street Vendors Program Area"¹, as more fully explained below, vendors operating from an approved location on the public sidewalk portion of the public right-of-way are limited to a cart size of four (4) feet high by five feet (5) wide by six (6) feet long. This size limitation was adopted in 1996.

Over time, the industry has evolved and become subject to additional State regulation. In 2007, the State of California repealed the California Uniform Retail Facilities Food Law (CURFFL) and replaced it with the California Retail Food Code. The new provisions increased regulation over vending and mandated that the County of Santa Clara implement additional enforcement measures. One component of these new rules requires that food vendors add additional equipment for food safety, including hand washing stations, and, for some carts, sinks. As a result of the new requirements, the number of required elements on a cart has increased resulting in carts that exceed the City's size limits. When staff met with food vendors, the vendors expressed concern that the current City limitations force them to choose between complying with City regulations on size or the County regulations.

In 2009, the San José Municipal Code was amended to create the Downtown Street Vendors Program Area. The purpose of the amendment was to promote economic growth and create a more vibrant City. To that end, the Council authorized the City Manager to promulgate regulations regarding approved location vendors in the downtown. In turn, the City Manager issued regulations lifting the above cart restrictions and authorizing a cart footprint of *up to 100 square feet*. The only limitation on the size of the cart was that it not exceed ten (10) feet in height. To protect the public right of way, restrictions were included to limit these carts to locations where the cart would not interfere with pedestrian or vehicular traffic and comply with the Americans with Disabilities Act. Since the City Manager has promulgated these regulations and this footprint approach has been in place, there have been no complaints regarding the various sizes of the carts being used within that footprint or the lack of compliance with City or County regulations. Accordingly, staff is proposing expanding the City Manager's authority to promulgate regulations for **all approved location vendors citywide**. In turn, this would allow the City Manager to issue regulations so that all approved location vendors, regardless of location within the City, would be allowed to operate from a footprint of up to 100 square feet. To further address concerns related to obstruction of pedestrian and vehicular traffic, the City Manager has worked closely with the Department of Transportation, the Police Department and the Fire Department to revise the Downtown Street Vendors Regulations so that they apply citywide and further delineate minimum setback requirements from controlled intersections, driveways and certain curb colors. Increasing the authority of the City Manager to promulgate regulations will provide the flexibility needed to address this rapidly evolving industry. The

¹ The area bounded by the following streets and portions of streets: to the north, San Fernando Street from Highway 87 to Almaden Avenue, then Julian Street from Terraine Street to 4th Street, then West St. John Street, from 4th Street to 7th Street; to the south, Interstate 280, from Highway 87 to 4th Street, then San Fernando Avenue from 4th Street to 7th Street; to the west, Highway 87 from San Fernando Avenue to Interstate 280, then Almaden Avenue, from Julian Street to San Fernando Avenue; and, to the east, 4th Street, from Julian Street to West St. John Street, then 7th Street, from West St. John Street to San Fernando Avenue, then 4th Street, from San Fernando to Interstate 280, except City Hall Plaza which is subject to the provisions of Chapter 13.23.

more detailed revised Regulations will also ensure safety while meeting the vendors' need for flexibility in cart sizes and allowing them to comply with County requirements.

B. Hours of Operation

- Mobile Vendors

Currently the hours of operation for mobile vendors citywide is from 10 a.m. to 7:00 p.m., or one half-hour after sunset (whichever comes first). The one exception is for mobile vendors selling adjacent to industrial and construction sites provided that consumption of the food occurs at that site. No change is being recommended.

- Approved Location Vendors

Currently vendors operating in the public right-of-way from a fixed location outside of the Downtown Street Vendors Program Area may operate between the hours of 6:00 a.m. and 7:00 p.m. or one half-hour after sunset (whichever comes first). Approved location vendors operating within the Downtown Vendors Program Area are permitted to operate between the hours of 6:00 a.m. and midnight. There have been no complaints regarding the hours of operation. However, staff recommends that the City Manager be delegated the authority to set hours of operation for all approved location vendors. Therefore, as the needs of the community and the vendors change, the City will be better equipped to address this issue in a balanced and timely fashion.

C. Distance Requirements

- Mobile Vendors

Mobile vendors are required to move their operation every fifteen (15) minutes and must move a distance of at least five hundred (500) feet from the previous place. In addition, they cannot be less than two hundred (200) feet from another mobile vendor that has already stopped to peddle. They are also prohibited from stopping within five hundred (500) feet of any school property. After discussing the current requirements with the stakeholders, these provisions were seen as reasonable and staff is not recommending any change.

- Approved Location Vendors

With regard to approved location vendors, the community expressed concerns about these vendors setting up shop too close to residential neighborhoods. Currently, with exception of those vending in the San José State University Campus Area and the Downtown Street Vendors Program Area, approved location vendors are prohibited from peddling from any location that is immediately adjacent to residentially used or residentially zoned property. However, staff learned from the community that the phrase "immediately adjacent" was too vague to enforce. Accordingly, staff recommends that approved location vendors maintain at least a one-hundred and fifty (150) foot distance from residentially zoned or used property.

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During outreach, the community also expressed concerns about sidewalk congestion. With the potential increase in cart size and the allowance of a 100 square foot footprint, congestion seems appropriate to address. Though the regulations that pertain to Downtown Street Vendors Program Area provide for all vendors to maintain a distance of at least ten (10) feet between the edge of their footprints, the intent behind this restriction was to promote vibrancy in the downtown. For areas outside the Downtown Street Vendors Program Area, staff is proposing that the City Manager adopt regulations such that at least two hundred (200) feet is maintained between the edge of the footprint of each peddler. This requirement will minimize congestion in a particular area of the sidewalk to ensure that it remains accessible.

E. Permit Duration

The cost of an approved location vendor permit is \$373 for the initial permit and \$165 to renew the permit. The cost of a mobile vendor permit is \$197 for the initial permit and \$165 for the renewal. Both types of permit have an initial term of one year, with a one year renewal. During stakeholder meetings, staff heard concerns about vendors not obtaining the requisite permits and the expense of the permits potentially being cost prohibitive. The proposed Title 6 ordinance would increase the terms for each of these permits to two years. The outcome of this change is two-fold. First it would effectively cut the cost of the permit in half – allowing it to be more accessible for vendors to obtain. Second, because permits would only need to be renewed every two years, the change would reduce the administrative burden on the Police Permits Unit; allowing more resources to be allocated towards enforcement.

F. Enforcement

As explained earlier, the largest concern brought up by participants in the community meeting was the issue of enforcement. Many complained that vendors operating in the public right-of-way were blocking vehicular and pedestrian traffic, making excessive amounts of noise, operating in an unsafe and unsanitary manner and were overly concentrated. There were also concerns that vendors compete with “brick-and-mortar” establishments that have more stringent requirements which are being enforced. Ultimately, many community members simply wanted consistent enforcement of the City’s existing and proposed regulations to ensure that there was a level playing field. As discussed in the “Permit Duration” section of this memorandum, staff’s recommended ordinance changes will address the enforcement issues by easing the administrative burden on vendors and the Police Permits Unit and freeing up staff to pursue enforcement of violations. Staff intends to provide additional guidance to vendors in partnership with community groups such as neighborhood organizations and the Health Trust. Vendors are also required to comply with pertinent regulations for food handling and safety that are established and administered by the Santa Clara County Environmental Health Department. Lastly, staff does not recommend an increase in administrative fine levels at this time. However, it is anticipated that increase in enforcement resources will result in additional fine revenues.

VENDING ON PRIVATE PROPERTY

With regard to vending on private property, Title 20 currently requires vendors operating outdoors to obtain Planning permits: an Administrative Permit in Commercial and Industrial zoning districts or a Special Use Permit in Downtown zoning districts. No Outdoor Vending is allowed in Residential zoning districts and all Vending Facilities must be at least one hundred and fifty (150) feet away from any residence. The proposed ordinance would (1) streamline the permit process as described below and (2) allow for the vending of fresh fruits and vegetables in Residential and non-Residential zoning districts.

A. Size

Currently, for vending on privately-owned parcels, the maximum allowable size of the facility any vendor can use is up to ten (10) feet in height by ten (10) feet in width by twenty-four (24) feet in length. Staff does not believe these restrictions will interfere with vendors' compliance with County Health Regulations described earlier and therefore, this regulation is not proposed to be revised.

B. Hours of Operation

- Residential Zoning Districts

Outdoor Vending on privately-owned lots is currently not allowed in Residential Zoning Districts. However, to promote access to healthy foods near where people live, work, and play and to support micro-enterprises, staff is proposing to allow the vending of fresh fruits and vegetables, *without* an Administrative Permit, provided that such vending occurs on privately owned parcels in Residential zoning districts primarily used for schools, libraries, community centers, or religious assemblies and it is limited to the hours of 7:00 a.m. and 9:00 p.m., for no more than two (2) hours a day per vendor and four (4) hours a day per site.

- Commercial, Industrial, Downtown & Pedestrian Oriented Zoning Districts

For vending on private property with a Planning permit, Title 20 currently limits the hours of operation to those hours allowed for the fixed-base businesses on the Fixed-Base host site. This regulation is not proposed to be revised. With regard to vending of any type of product in Commercial, Industrial, Downtown and Pedestrian Oriented zoning districts, all current provisions apply to the vending of fresh fruits and vegetables. As proposed, the vending of fresh fruits and vegetables would be a permitted use, *without* an Administrative Permit, provided that such vending was limited to the hours of 7:00 a.m. and 9:00 p.m. The vending of other products would be a permitted use, *without* an Administrative Permit, as well, provided that such vending were limited to the hours of 7:00 a.m. and 9:00 p.m. and occurred for no more than two hours a day per vendor. If the vending activity were to occur for more than two hours in a 24-hour period, an Administrative Permit would be required.

C. Distance

Currently Title 20 requires a minimum distance between any vending facility and any residentially zoned or used property of one-hundred and fifty (150) feet. To promote access to healthful produce, staff is proposing an amendment which would allow vendors selling fresh fruits and vegetables to be at least one-hundred (100) feet from an exclusively residentially used or zoned property.

D. Term of Permit

For those vendors who operate in excess of two (2) hours a day and require an Administrative Permit, staff is proposing a change which would ease the financial burden on the permittee thereby promoting compliance with the Code. The initial term of an Administrative Permit is one (1) year. The base cost is currently \$850. The term of the renewal for an Administrative Permit is two (2) years and the cost for the renewal is the same. Staff is proposing to lengthen the initial term of an Administrative Permit from one (1) year to (3) three years, and lengthen the renewal term from (2) two years to five (5) years. This extension would reduce the cost of the Administrative Permit by more than half and lessen the administrative burden on staff.

E. Enforcement

In order to facilitate enforcement of existing and proposed regulations for vending from private property, staff intends to bring forward to the Council modifications to the Schedule of Administrative Fines. Those modifications would include an increase in existing fines and addition of new fines for Code Enforcement staff to use in citing property owners or permittees for noncompliance with applicable regulations.

Staff's recommended ordinance changes will also address the enforcement issues by lowering the barriers to compliance and freeing up staff to pursue enforcement of violations. Staff further intends to provide additional guidance to vendors in partnership with community groups such as neighborhood organizations and the Health Trust.

EVALUATION AND FOLLOW-UP

Council will be updated prior to any significant changes in the regulations. Staff will report back to the Council in a year from implementation to advise whether the permit fees are fully covering the cost of issuing permits and enforcing their terms or whether adjustments to the Fee Schedule are needed to further ensure that vendors are operating in full compliance with City regulations..

PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Staff posted information about the proposed ordinance amendments to the City Manager's Weekly distribution list and engaged the public on issues regarding the potential changes to the Municipal Code in a community meeting held on March 21, 2013. Community members and industry representatives attended this meeting and commented on the effectiveness of existing and proposed regulations.

In addition, the proposed regulations for outdoor vending on privately-owned parcels were discussed at a public hearing with the Planning Commission on April 10, 2013. This item will be posted on the Council Agenda for May 14, 2013.

COORDINATION

This memorandum was coordinated with the Department of Planning, Building and Code Enforcement and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

The intent of the proposed ordinances is to encourage vendors that are operating out of compliance with current City regulations to obtain the requisite permits and operate in a manner that will bring them into compliance. Under Title 6 and Title 20, the City is set up to operate on a cost recovery basis for its issuance of permits, charging the permittee the cost of processing the permit and enforcing its terms.

As indicated earlier, the fees for the permits discussed herein are as follows: \$197 for a mobile vendor permit, \$373 for an approved location vendor permit and \$850 for an administrative vendor permit. While staff believes that extending the term of these permits will ease the administrative burden on staff so that more time can be focused on enforcement of the City regulations, it is unknown precisely how many vendors will take advantage of the new

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permitting process. Therefore, it is difficult to forecast the effect the proposed changes will have on the amount of staff ultimately required for enforcing this program. As such, staff will report back to the Council in a year from implementation to advise whether the permit fees are fully covering the cost of issuing permits and enforcing their terms or whether adjustments to the Fee Schedule are needed to further ensure that vendors are operating in full compliance with City regulations.

CEQA

Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the Envision San José 2040 General Plan Program. Accordingly, the Final Program Environmental Impact Report (PEIR) for the Envision San José 2040 General Plan entitled, "Envision San José 2040 General Plan," for which findings were adopted by City Council Resolution No. 76041 on November 1, 2011, adequately describes the activity for the purposes of CEQA. The project does not involve new significant effects beyond those analyzed in this Final PEIR. Therefore, the City of San José may take action on the project as being within the scope of the Final PEIR, File No. PP13-024.

/s/

ANGELIQUE GAETA
Assistant to the City Manager

/s/

LARRY ESQUIVEL
Acting Chief of Police

For questions, please contact Angelique Gaeta, Assistant to the City Manager, at 408-535-8253.